IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02-02-2005

CORAM :

THE HONOURABLE MR. JUSTICE S.R. SINGHARAVELU

Second Appeal No. 111 of 1994
-o-

1. M/s. Ganapathy Lunghi Company
   rep. by its Partners

2. A. Ganapathy Mudaliar
3. M. Arunachala Mudaliar
4. A. Subramania Mudaliar
5. A. Thirunavukkarasu Mudaliar
6. S. Sakthivel
7. Ravi
8. D. Vetrivel
9. D. Rajendran .. Appellants/Defendants

Versus

Tamil Nadu Handloom Development Board
rep. by its Managing Director
No.7, Nungambakkam High Road,II Floor
Madras - 600 034 .. Respondent/Plaintiff

Appeal under Section 100 CPC against the Decree and Judgment passed by the learned Additional District Judge, Cuddalore made in A.S. No. 193 of 1992 dated 25-06-1993 modifying the decree and Judgment passed by the Subordinate Judge, Villupuram made in O.S. No. 159 of 1988 dated 20-12-1990.

For Appellants : Mr. R. Subramanian
For Respondent : Miss. Juliet Pushpa for
Ms. P.V. Rajeswari

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JUDGMENT

This second appeal is directed against the decree and judgment dated 25-06-1993 passed by the learned Additional District Judge, Cuddalore in A.S. No. 193 of 1992, which itself was preferred against the Decree and Judgment dated 20-12-1990 passed in O.S. No. 159 of 1988 by the Subordinate Judge, Villupuram.

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2. While admitting this second appeal, the following substantial questions of law have been framed by this Court;-

i) Whether the lower appellate Court is justified in awarding interest at 18% per annum notwithstanding the fact that Ex.A2 promissory note prescribes interest only at the rate of 16% per annum?

ii) Whether the reasonings of the lower appellate Court for reversing the findings of the trial court rendered in paragraphs 9 and 10 in respect of Ex.A6 are sustainable in Law?

3. The suit is based on mortgage by deposit of title deeds. The first defendant/first appellant is a partnership concern wherein the other defendants/appellants are partners. They have raised loan from the respondent/ plaintiff namely Tamil Nadu Handloom Development Board. The principal amount borrowed was Rs.25,000/-. There was a standard format agreement, wherein, it was agreed that the defendants will repay the debt with interest at the rate of 16% per annum together with revised interest, in case, the interest is revised and also penal interest.

4. The trial court decreed the suit for a particular amount and the appellate Court has also deducted some portion of Rs.1,156.25 on specific grounds relating to which there is no dispute between the parties. The area of dispute is regarding the claim of revised enhanced interest and penal interest.

5. The learned counsel appearing for the appellants/ defendants contended that there was no agreement at all and therefore it is unenforceable in law. Thus, what is payable by them by way of interest is only 16% per annum. The learned counsel for the respondent/plaintiff submits that since the agreement between the parties reads that the defendants are liable to pay enhanced interest as and when it was revised, the defendants are bound by the act of enhancement of interest by way of revision from 16% to 18% per annum and also penal interest.

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6. In this connection, the agreement found to have contained the following terms:-

"....அவ்வாறு வழங்கும் கடன் தொகையின் பேரில் தற்பொழுது அமுலிலுள்ள வட்டி விகிதப்படியும் இனி வட்டி விகிதம் உயர்த்தப்பட்டால் அப்படி உயர்த்தப்படும் வட்டி விகிதப்படியும் வட்டி செலுத்த கட்டுப்படுகிறேன்."

7. This is a bald and vague term made in the application for loan and it cannot be construed as an agreement. Even assuming that it is an agreement, the terms are enforceable between the parties only if the

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subject matter is earmarked. In this case, the subject matter is interest and there cannot be an agreement regarding unspecified rate of interest and that agreement is available only for 16% per annum. To say that defendants have agreed to pay the enhanced interest rate as and when it was revised by the plaintiff, it may not amount to an agreement at all in view of the fact that there was no communication made to the defendants by the plaintiff as and when the revision in interest was made by enhancing the rate of interest from 16% to 18% per annum. Only when the subject matter of agreement was communicated and conveyed, there can be a consensus between the parties. Mere acceptance of a policy of revision may not amount to a specified agreement upon a particular fact or term. In this way, there is no consensus between the parties relating to the quantum of revised interest. What was agreed was the capacity of the plaintiff to revise the rate of interest and not regarding the actuality of amount of interest that was enhanced by way of revision. Therefore, there is no agreement in this connection, making the defendants liable to pay the interest at 18% per annum instead of 16% per annum, originally agreed for. There is also no agreement for payment of penal interest. Therefore, the interest portion at 18% per annum and penal interest mentioned in the appellate Court decree are set aside.

8. In the result, the defendants are liable to pay Rs.12,507.85 with interest thereon at 16% per annum till the date of decree and thereafter at the rate of 6% per annum till realisation.

9. The substantial questions of law are answered accordingly. The second appeal is allowed. No costs. Consequently.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Additional District Judge
Cuddalore

2. The Subordinate Judge
Villupuram

+1cc to M/s. P.V.Rajeswari, Advocate Sr 4376

MAB (CO)
km/16.2.

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